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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,201	06/20/2003	Vladimir I. Slepnev	046264-065331	5135
72779	7590	02/14/2008	EXAMINER	
Mark J. FitzGerald Nixon Peabody LLP 100 Summer Street Boston, MA 02110-2131			BERTAGNA, ANGELA MARIE	
			ART UNIT	PAPER NUMBER
			1637	
			MAIL DATE	DELIVERY MODE
			02/14/2008 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/600,201

**Applicant(s)**

SLEPNEV, VLADIMIR I.

**Examiner**

ANGELA BERTAGNA

**Art Unit**

1637

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 09 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 09 January 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-73.  
Claim(s) withdrawn from consideration: 74 and 75.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 20070904  
13. ☐ Other: \_\_\_\_\_.

/Kenneth R Horlick/  
Primary Examiner, Art Unit 1637

Continuation of 3. The proposed amendments to the claims raise new issues that would require further search and consideration, and therefore, the amendment has not been entered. The proposed amendment raises new issues, because it does more than simply incorporate the limitations of cancelled claims 20 and 36 into claims 18 and 34, respectively. In addition to incorporating a step of "separating nucleic acid molecules made during said amplification regimen by size and/or by charge", the amendment also requires that the amplification products be distinctly sized. Also, regarding claim 34, Applicant's amendment to the claim add the word "second" in step (a) line 14 narrows the scope of the claim beyond what has been previously considered. Therefore, this amendment to claim 34 requires additional search and consideration. Finally, the proposed amendment to claim 62 raises issues that require further search and consideration, because in addition to incorporating a step of "separating nucleic acid molecules made during said amplification regimen by size and/or by charge", the amendment also requires that the amplification products be distinctly sized and the distinguishable label is detected in distinctly sized amplification products. These limitations require further search and consideration.

It is noted, however, that if entered, the proposed amendment would overcome the rejection made under 35 U.S.C. 102(b) citing Myakishev.

Continuation of 11. Applicant's arguments are directed to the claims as amended and also focus on the declaration by Vladimir Slepnev submitted on January 9, 2008. Since the amendment and declaration were not entered, these arguments are moot, and the claims remain rejected for the reasons made of record in the Final Rejection mailed on July 9, 2007.

Continuation of 12. The information disclosure statement filed on September 4, 2007 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered. The information disclosure statement filed on September 4, 2007 also fails to comply with 37 CFR 1.97(d) because it lacks the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.